

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

10,881

FILE: B-193565

DATE: July 27, 1979

MATTER OF: Xerox Corporation *PLG 02355*

*[Protest Alleging That Equipment Lease With Competitor Is Prohibited
by Federal Procurement Regulations]*

DIGEST:

Federal Procurement Regulations § 1-4.1103-1(c)(3) permits agencies to place orders for automated data processing equipment under Schedule contracts, and without delegation of procurement authority (DPA) from General Services Administration, when purchase price is less than \$300,000. Here, agency placement of such order was improper, since purchase price exceeded \$300,000.

Xerox Corporation (Xerox) has protested the placement of an order for the lease of a high speed printer by the Department of Commerce (DOC) with the International Business Machines Corporation (IBM) under its automated data processing (ADP) Schedule contract with the General Services Administration (GSA).

Xerox contends that ~~Federal Procurement Regulations~~ *prohibit* (FPR) Temporary Regulation No. 46, 43 Fed. Reg. 40015, September 8, 1978, prohibits placement of orders against ADP Schedule contracts when the purchase price of the items ordered exceeds \$300,000, as it does in this instance.

DOC argues, ^d however, that ^{another} paragraph 1-4.1107-6(b)(3) of the regulation permits the use of ADP Schedule contracts for the continued lease or rental of installed equipment even if the purchase price exceeds \$300,000 so long as a central processing unit (CPU) is not involved. That paragraph provides that:

"(3) ADP schedule contracts may be used for the continued lease or rental of installed equipment and software except that the continued lease of an installed central processing

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unit (CPU) or an ADP system that includes a CPU is subject to the following:

"(i) Requirements shall be synopsized in accordance with paragraph (c) of this § 1-4.1107-6. and

"(ii) A specific delegation of procurement authority pursuant to § 1-4.1104 is obtained before issuing the renewal order where the schedule purchase price exceeds \$300,000 when the equipment is available from a source other than the schedule contract."

DOC notes that a CPU is not involved here and, therefore, use of ADP Schedule contracts was proper.

Since GSA promulgated the regulation in question, it was asked to provide comments on the protest. It is GSA's position that DOC had applied the incorrect section of the regulation. According to GSA, the section cited by DOC applies only to contracts for the continued lease or rental of installed equipment, not to situations where the installed equipment is being replaced, as it is here. Rather, GSA states, the correct section of the regulation to be applied in this situation is FPR § 1-4.1103-1(c)(3), which provides that agencies:

"* * * may procure ADPE without prior approval of GSA provided:

* * * * *

"(c) The procurement will occur by placing a purchase/delivery order against a GSA schedule contract (see 1-4.1107-6) provided that:

* * * * *

"(3) When an ADTS/ADP schedule contract is utilized, the total purchase price of the item(s) covered by the order does not exceed \$300,000. (Note: Even though the item(s) are to be rented or leased, the purchase

price shall be used to determine if the dollar value of the order falls within the \$300,000 threshold) * * *."

This section does not permit use of ADP Schedule contracts when the purchase price of the items exceeds \$300,000, even though the items are to be leased rather than purchased. In such situations, the procuring agency must obtain a delegation of procurement authority from GSA and must follow the appropriate FPR provisions.

GSA also provided our Office with the following facts. After placing the order, DOC contacted GSA concerning the need for a delegation of procurement authority (DPA) in November 1978. At that time, GSA advised DOC that a DPA was not required. However, in mid-January 1979, GSA re-viewed the transaction, changed its position and informally advised DOC that a DPA was necessary. On March 27, 1979, GSA formally notified DOC that it was without authority to proceed with the acquisition until "an appropriate DPA was obtained and the equipment selected in accordance with the provisions of the applicable Federal Procurement Regulations." DOC requested a DPA on May 22, 1979. GSA is holding action on the request in abeyance until resolution of this protest.

GSA was the opinion of GAO that

The view of GSA is entitled to significant weight because it promulgated the regulation, and because it has statutory responsibility for Government ADP procurement.]
Control Data Corporation, B-186501, February 2, 1977,
77-1 CPD 83; Comdisco, Inc., 54 Comp. Gen. 196 (1974),
74-2 CPD 152. In addition, our interpretation of the regulations is in agreement with GSA's. [Accordingly, we ^{GAO}
~~find~~ ^{found} that DOC's actions in procuring the printers were improper, and the protest is sustained.]
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We have been advised that while the equipment has been ordered, it has not been delivered or installed. Therefore, we recommend that GSA rule on DOC's pending request for a DPA and that DOC take whatever action is necessary as a result of GSA's determination.

A. K. Miller

Deputy Comptroller General
of the United States